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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GASPAR AVENDANO,

Defendant and Appellant.

B259577

(Los Angeles County
Super. Ct. No. YA085626)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Steven Van Sicklen, Judge. Affirmed.

Rachel Lederman, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Following a court trial, defendant and appellant Gaspar Avendano was found guilty of receiving stolen property, with a prior prison term enhancement (Pen. Code, §§ 496, subd. (a), 667.5, subd. (b)).¹ The charge against Avendano arose after police found him inside the secured portion of a gated apartment complex, in possession of a backpack containing car keys, remotes, apartment complex keys, and apartment complex key fobs.² One of the keys opened a security door to the complex. Evidence at trial demonstrated these items had been stolen six months earlier from the apartment complex's business office.

The trial court sentenced Avendano to a term of three years in state prison, consisting of the middle term of two years for receiving stolen property and one year for the prior prison term enhancement. Avendano appealed, claiming the trial court erred by failing to exercise its discretion under section 17, subdivision (b)(3), to determine whether his conviction for receiving stolen property, which is a “wobbler,” should be sentenced as a misdemeanor or a felony. This court, in *People v. Avendano* (May 15, 2014, B249153) [nonpub. opn.], agreed, reversed the judgment, and remanded to the trial court to exercise its section 17 discretion and resentence Avendano.

On August 8, 2014, the trial court held a section 17 hearing, denied Avendano's request that the offense be treated as a misdemeanor, and imposed the same three-year sentence as before. The trial court explained that, even though the monetary value of the stolen keys was negligible, Avendano's offense was serious because the keys gave him access to apartments and cars. The trial court also concluded Avendano did not appreciate the seriousness of the offense, had lied about where he obtained the keys, was not remorseful, and had only a poor potential for rehabilitation as demonstrated by his prior criminal record.

¹ All further statutory references are to the Penal Code unless otherwise specified.

² These facts are taken from our unpublished decision in Avendano's prior appeal, *People v. Avendano* (May 15, 2014, B249153) [nonpub. opn.].

Avendano filed a timely notice of appeal and we appointed counsel to represent him. After reviewing the record, appellate counsel filed an opening brief requesting this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. On April 6, 2015, Avendano filed a supplemental brief presenting numerous unclear contentions which appear to inappropriately pertain to matters beyond the sole sentencing issue that was to be addressed on remand. “In an appeal following a limited remand, the scope of the issues before the court is determined by the remand order. [Citations.]” (*People v. Murphy* (2001) 88 Cal.App.4th 392, 396-397; see, e.g., *People v. Deere* (1991) 53 Cal.3d 705, 713 [“Although the judgment was reversed as to penalty, it was ‘affirmed in all other respects.’ [Citation.] Thus, only errors relating to the penalty phase retrial may be considered in this subsequent appeal. [Citations.]”].)

Avendano does not contend the trial court erred by rejecting his section 17 motion to have his offense sentenced as a misdemeanor. Moreover, it appears the trial court considered appropriate factors in reaching its decision. (See *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 978 [“We find scant judicial authority explicating any criteria that inform the exercise of section 17(b) discretion. [Citation.] However, since all discretionary authority is contextual, those factors that direct similar sentencing decisions are relevant, including ‘the nature and circumstances of the offense, the defendant’s appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and demeanor at the trial.’ [Citations.] When appropriate, judges should also consider the general objectives of sentencing such as those set forth in California Rules of Court, rule [4.410].”])

We are satisfied that defense counsel has fully complied with her responsibilities and that no arguable appellate issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 278 [120 S.Ct. 746]; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

DISPOSITION

The judgment is affirmed.

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EDMON, P. J.

We concur:

KITCHING, J.

ALDRICH, J.